UNITED
NATIONS

AT

Administrative Tribunal

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AT/DEC/732
21 November 1995

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 732

Case No. 802: AKKAWI

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 10 July 1994, Hassan Ahmed Akkawi, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, hereinafter referred to as UNRWA, filed an application requesting the Tribunal, inter alia:

> "a. [To rescind] the contested decision ...
>
> b [To reinstate] the Applicant to his post under whatever title it existed, and considering the period of cessation as a period of special leave with full pay.
>
> c. [To compensate him] for the moral and material injury, with US$100,000, should Respondent not reinstate [him].
>
> d. [To pay] counselling fees and secretarial expenses estimated at US$3,000."

Whereas the Respondent filed his answer on 30 December 1994;

Whereas the Applicant filed written observations on 21 April 1995;

Whereas, on 29 October 1995, the Applicant submitted an additional statement;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 20 November 1980, as a Civil Engineer in Lebanon, on a fixed-term appointment at grade 14. His appointment was extended repeatedly, and he was granted an indefinite appointment, with effect from 1 January 1985. On 1 January 1992, the Applicant's post was reclassified as Deputy Field Technical Officer, at grade 16, and the Applicant was appointed to the reclassified post and promoted. On 1 December 1992, the post of Deputy Field Technical Officer was abolished. On 16 December 1992, the Applicant separated from service.

In a memorandum to the Comptroller, dated 3 November 1992, the Director of UNRWA Affairs, Lebanon (the Field Director), proposed, in the context of a reorganization of the office, that the post of Deputy Field Technical Officer be abolished, noting that "there are no major construction works in hand". In a reply dated 9 November 1992, the Comptroller and the Officer-in-Charge, Department of Personnel, jointly agreed to the abolition of the post. On 14 November 1992, the Field Personnel Officer informed the Applicant that a decision had been taken to eliminate the post of Deputy Field Technical Officer with effect from 1 December 1992 and that as a consequence, the Applicant was "hereby declared redundant." As an alternative to redundancy, he offered the Applicant the post of Area Officer, Beqa'a, grade 12, with grade protection at grade 14. He advised the Applicant that this post was the only suitable vacant post and that if he did not accept it, he would be separated on redundancy with effect from 9 December 1992.

In a memorandum to the Field Director, dated 11 December 1992, the Applicant contested the decision to abolish his post, which he asserted was a reflection of "sheer prejudice" undertaken "not because it is not needed any more, but just in order to get rid

of its incumbent." He protested the offer of an alternative post in Beqa'a. He requested that the decision to eliminate the post be rescinded and that he be considered on special leave with full pay until a favourable decision was taken. In a reply dated 12 December 1992, the Field Director stated "your post was eliminated like a whole range of other posts," in accordance with the Area Staff Regulations and Rules. He urged the Applicant to take the alternative post offered to him, noting that otherwise he would be separated under the redundancy rules.

In a letter dated 16 December 1992, the Field Director noted that the Applicant, on that day, had officially informed him of his rejection of the alternative post offered to him in Beqa'a. The Field Director informed the Applicant that in the circumstances, his service with the Agency would be "terminated on redundancy under Area Staff Rule 109.1 effective from close of business on 16 December 1992."

On 17 December 1992, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 5 May 1994. Its recommendation reads as follows:

> "21. In view of the foregoing, the Board unanimously recommends that the Appellant's case be reviewed with a view to reinstating the Appellant in a post commensurate with his qualifications, experience and previous remuneration, and that the period between the date of termination of the Appellant's services on redundancy and that of his reinstatement be considered special leave with full pay under the provisions of Area Staff Rule 105.2 and Personnel Directive A/5/Rev.1(1.4.9)."

On 1 June 1994, the Commissioner General transmitted a copy of the JAB report to the Applicant and informed him as follows:

> "You will note that the Board acknowledged that it is the prerogative of the Administration to eliminate a particular post, thereby placing the incumbent in a position of provisional redundancy, provided that affected staff members are dealt with within the framework of provisions

stipulated on redundancy, particularly the applicable Personnel Directive. The Board then noted what they considered the short notice of redundancy given to you, and expressed the view that the offered post of Area Officer, Beqa'a, was not a suitable post within the meaning of the Directive. The Board recommended that your case be reviewed with a view to reinstating you in a post commensurate with your qualifications, experience and previous remuneration, and that the period between the date of termination of your services on redundancy and that of your reinstatement be considered special leave with pay.

I have given your case the most careful and thorough consideration. Having done so, I cannot agree with the Board that the post of Area Officer, Beqa'a, to which you were offered transfer with grade and salary protection, was not a suitable post within the meaning of the Personnel Directive. I fail to see how you would have been disadvantaged by accepting transfer to this important position, and this is the criterion to be applied under the applicable subparagraph of the Directive. In any case, even if the offered post had not been suitable, the Administration's obligation would have been only to pay a termination indemnity. In this regard, you were offered financial compensation by the Director of Administration and Human Resources which exceeded the requirements of the Directive. In my view, this was a fair offer, and had you accepted it, your situation would have been no worse, and even slightly better than, any other staff member whose post had been eliminated and was therefore declared redundant."

On 10 July 1994, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The decision to terminate the Applicant's service was motivated by prejudice. The claim that it was motivated by redundancy is false as the Respondent did not eliminate the Applicant's post until eight months after termination of the Applicant's service and the post was re-established three months after its elimination.

2. The Respondent contravened his rules regarding redundancy.

Whereas the Respondent's principal contentions are:

1. The Respondent's decision was proper and in accord with its rules. There was a sound managerial basis for the elimination of the Applicant's post, and the Applicant was offered a suitable alternative post.

2. There is no evidence that the Respondent's decision was motivated by personal prejudice or bias.

The Tribunal, having deliberated from 10 October to 21 November 1995, now pronounces the following judgement:

I. The Applicant's reaction to the abolition of his post was that the decision was based on prejudice and extraneous factors and was designed to get rid of him. He also contends that the action did not accord with the relevant rules and regulations; that the need for the post had not ended; that the proposed transfer would not have been to a post in the same or a similar group, because the Applicant is an Engineer and not an Administrator; that there would have been loss of salary and that he did not receive the required three months notice.

The Applicant further claims that the abolition took place at a time when he was involved in a major work expansion and when more posts were being filled in Lebanon, including posts such as Principal T.C. Siblin and that of maintenance engineer. Furthermore, the Applicant notes that his post had been reclassified approximately a year before, the implication being that it should not have been necessary to abolish it such a short time later.

II. While the Tribunal notes the points made by the Applicant, it fails to find any evidence that the decision was prompted by prejudice and by a wish to get rid of the Applicant for base reasons.

The Respondent's reasons for abolishing the post have been examined by the Tribunal. The Tribunal will not enter into the merits of the reasons for the abolition. It examines the reasons proffered only to discover whether the case put forward by the Respondent could be said to be perverse in the circumstances.

The Respondent says that there was a sound managerial basis for the abolition and lists the factors that were taken into account. There were no major construction works planned for 1993; the 1993 planned construction was of a routine nature or was to be carried out by consultants; there were three engineers in the Field Technical Office other than the Applicant and in the light of the type of construction planned in 1993, the Applicant's post would be unnecessary. The savings from the proposed reorganization were necessary for other programmes.

The Respondent further makes the point that the circumstances which forced the abolition of the post could not have been foreseen when it was established only a year before. In relation to the new post of Assistant Field Technical Officer, this occurred some twelve months later, when circumstances were different and different skills and qualifications were needed.

The Tribunal concludes that, whatever the merits of these reasons on managerial and efficiency grounds are, they do not suggest a basis for prejudice.

III. The Applicant was unhappy with the offer of the alternative post. The Respondent says that, in offering the post, he was fulfilling his obligations.

Area Staff Personnel Directive A/9, paragraph 14, provides that when a staff member's post has been abolished, he or she is declared provisionally redundant. During the period of provisional redundancy efforts should be made to locate a "suitable post" to which a staff member could be transferred. "Suitable post" includes posts of the same occupation and grade; posts of lower grade or with

a lower salary to which the staff member agrees to be transferred, and any other post which, in the opinion of the Commissioner-General and having regard to all the circumstances, including the views of the staff member, is not to his or her disadvantage.

In cases of transfers to posts which are more than two grades lower than that previously held by a staff member, he or she shall "have his/her salary protected at a grade which is two grades higher than the post to be occupied, and at the incremental step that most closely approximates that applicable in his/her previous grade, provided that the new step does not exceed the maximum incremental step for the new grade".

The Applicant was offered a post which was not of the same occupation. It was significantly lower in grade but the Respondent has dealt with this by offering the required grade protection.

IV. The Tribunal is concerned that the Respondent, in determining that the post offered to the Applicant was a suitable post, did not take sufficient, or indeed any cognizance of the requirements of paragraph 14.6.3 of the Staff Personnel Directive, which places an obligation on the Commissioner-General to have regard to the views of the staff member. It is only if the Commissioner-General takes all the relevant factors into account that it can be said that a suitable post was properly offered. This does not appear to have occurred. It does not necessarily follow, however, that the post offered to the Applicant was in fact unsuitable, particularly if no alternative post was available. The Respondent's failure to consider the Applicant's views was a procedural shortcoming.

The Respondent, in failing to give the required three months notice to the Applicant, did not observe another important procedural requirement. The Applicant was entitled to a strict adherence to the rules and he should not have been told that he was to lose his post within such a short time.

V. In the light of the foregoing procedural irregularities, the Tribunal orders the Respondent:

(i) To pay to the Applicant six months of his net base salary, at the rate in effect at the time of his separation from service.

(ii) To give the Applicant priority consideration for any post for which he applies and for which he is qualified.

VI. The Tribunal makes no further order, and rejects all other pleas, including the Applicant's request for costs.

(Signatures)

Samar SEN
Vice-President, presiding

Hubert THIERRY
Member

Francis SPAIN
Member

New York, 21 November 1995

R. Maria VICIEN-MILBURN
Executive Secretary